

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

- v -

INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, AFL-CIO, et al.,

Defendants.
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ORDER

CV-05-3212 (ILG)(VVP)

The plaintiff has made a substantial showing that the deposition *de bene esse* of George Barone is warranted, given his age and medical condition. See generally *Manley v. Ambase Corp.*, 337 F.3d 237, 246-47 (2nd Cir. 2003); *Penn Mut. Life Ins. Co. v. United States*, 68 F.3d 1371, 1375, 314 U.S. App. D.C. 320, 324 (D.C. Cir. 1995); *RLS Associates, LLC v. United Bank of Kuwait PLC*, No. 01 Civ. 1290, WL 578917, *6 -7 (S.D.N.Y. March 11, 2005). Accordingly, the plaintiff's motion to do so is granted. The deposition may be conducted at the earliest time, on or after May 1, 2006, when the health of the witness permits, provided, however, that the plaintiff shall provide at least 20 days' notice prior to the commencement of the deposition. The deponent shall not be required to give more than four hours of testimony on any given day.

The application for the production of further medical records and for a statement by the deponent's physician concerning the witness' mental competence is denied. The defendants may inquire at the deposition, however, about the deponent's medical condition, including any diagnosis and treatment he may have received concerning mental infirmities. Upon an adequate showing of need the parties may be permitted to conduct a further deposition of the witness, but questions concerning the circumstances and conditions under which such a deposition will proceed are deferred to such time as an application is made.

SO ORDERED:

Viktor V. Pohorelsky
VIKTOR V. POHORELSKY
United States Magistrate Judge

Dated: Brooklyn, New York
March 24, 2006